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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 TODD SHELLEY,) Case No.: 2:10-cv-00518-RLH-PAL
10)
11 Plaintiff,) **ORDER**
12) (Motion for Temporary Restraining
vs.) Order-#6)
13)
14 NATIONAL DEFAULT SERVICING)
CORPORATION; SAXON MORTGAGE, INC.)
15 D/B/A SAXON HOME MORTGAGE; FIRST)
16 AMERICAN TITLE; STEWART MORTGAGE)
SERVICES; DOES I-X; ROES I-X, inclusive,)
Defendants.)

17 Before the Court is Plaintiff Todd Shelly's *ex parte* **Motion for Temporary**
18 **Restraining Order** (#6), filed July 27, 2010.

19 **BACKGROUND**

20 Todd Shelly's lawyer, Jeffrey D. Conway, filed this Motion in an attempt to prevent
21 the sale of Mr. Shelly's house at 4933 Gate Fall Court, Las Vegas, Nevada, in a non-judicial
22 foreclosure proceeding scheduled for a date Mr. Conway does not specify. (In his Complaint,
23 however, Shelly alleges the foreclosure sale was scheduled for April 13, 2010.) Shelly admits he is
24 a party to a mortgage obligation and has lived in the house as his principal residence for several
25 years, but does not state when he entered into the loan. In his Complaint and this Motion, Shelly
26 alleges almost no specific facts about Defendants. But he does allege, "upon information and

1 belief,” that “none of the Defendants ... were [*sic*] the lender, but were only middlemen performing
 2 a service for a fee on behalf of a New York based entity which sold securities to raise the capital
 3 for Plaintiff’s loans.” (Dkt. #1, Compl. ¶ 2.) This assertion is one of many made only “upon
 4 information and belief” in the Shelly’s Complaint, in which he claims that he has “no idea whom,
 5 [*sic*] if anyone, is the true holder in due course (if there is one) of the note related to the
 6 property[;]” and that none of the Defendants have standing in connection with the loan transaction
 7 because they cannot “show the entire chain of title of the notes and the entire chain of title of the
 8 deeds of trust.” (*Id.* ¶¶ 24, 26.)

9 In his Complaint, Shelley alleges the following causes of action: (1)
 10 misrepresentation and fraud by omission; (2) quiet title; (3) contractual breach of duty of good
 11 faith and fair dealing; (4) tortious breach of the implied duty of good faith and fair dealing; (4)
 12 civil conspiracy; (5) civil conspiracy; (6) civil RICO and racketeering; (7) unjust enrichment; (8)
 13 fraud by obtaining signatures by false pretenses; and (9) declaratory relief. In the Motion before
 14 the Court, Shelly requests an order “staying any and all foreclosure actions and any an all unlawful
 15 detainer or eviction actions ... until such time as the merits of the case can be heard and
 16 adjudicated by this Court.” (Dkt. #6, Mot. 6.)

17 The Court is troubled by Las Vegas’ ongoing foreclosure crisis and is sympathetic
 18 towards Mr. Shelly and all others negatively affected by it. But for the reasons given below, the
 19 Court concludes Shelly’s Motion for a Temporary Restraining Order does not satisfy the standard
 20 governing such relief, and denies the Motion.

21 DISCUSSION

22 In order to obtain a temporary restraining order or a preliminary injunction,
 23 plaintiffs must establish that: (1) they are likely to succeed on the merits, (2) they are likely to
 24 suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his
 25 favor, and (4) an injunction is in the public interest. *Sierra Forest Legacy v. Rey*, 577 F.3d 1015,
 26 1021 (9th Cir. 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 374 (2008)).

1 Shelly has failed to show he is likely to succeed on the merits on any of his causes
 2 of action. Both his Complaint and this Motion are almost totally devoid of actual factual
 3 allegations not made "upon information and belief," let alone facts that support the causes of
 4 action he alleges and show a likelihood of success.

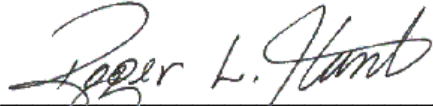
5 Under Rule 9(b) of the Federal Rules of Civil Procedure parties alleging fraud must
 6 "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). Pleading fraud
 7 with particularity requires "an account of the time, place, and specific content of the false
 8 representations, as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG,*
 9 *LLP*, 476 F.3d 756, 764 (9th Cir. 2007); *see also Morris v. Bank of Nev.*, 886 P.2d 454, 456 n.1
 10 (Nev. 1994). Rule 9(b)'s heightened pleading standard applies to claims for fraud, intentional
 11 misrepresentation, and negligent misrepresentation. *See G.K. Las Vegas Ltd. Partnership v. Simon*
 12 *Prop. Group*, 460 F. Supp. 2d 1222, 1244 (D. Nev. 2006). Shelly has provided no such
 13 particularity in his fraud claim, let alone showing in this Motion that he is likely to succeed on that
 14 claim.

15 Shelly has also failed to show he is likely to succeed on their remaining causes of
 16 action. His allegations are conclusory and speculative. To support this Motion, he does not even
 17 provide the Court with a copy of the promissory note or the deed of trust, or any other evidence.
 18 Shelly has not shown he is entitled to the relief he seeks.

19 CONCLUSION

20 Accordingly, and for good cause appearing,
 21 IT IS HEREBY ORDERED that Plaintiff's Motion for Temporary Restraining
 22 Order (#6) is DENIED.

23 Dated: July 29, 2010.

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 25 **ROGER L. HUNT**
 26 Chief United States District Judge